IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2007

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1241 of 2007

Mrs. Latha .. Petitioner

Vs.

1. The Secretary to Govt.
   Prohibition and Excise Department
   Fort St.George
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600008. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for a writ of Habeaus Corpus as stated therein.

For Petitioner : M/s.T.K.Sampath Associates
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order made by P.D.DINAKARAN,J.)

The petitioner, who is the mother of the detenu, Selvam, son of Raju, who has been incarcerated by order of detention dated 25.6.2007 of the second respondent in proceedings No.262/2007 passed under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records relating to the detention order in proceedings No.262/2007 dated 25.6.2007, to set aside the same and to direct the respondents to produce him before this Court and set at liberty.

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2. The order of detention dated 25.6.2007 was passed on the basis of ground case in Crime No.2067 of 2007 on the file of S-11, Tambaram Police Station, for alleged commission of offences under Sections 341, 392, 336 and 506(ii) of I.P.C. The allegation against the detenu was that on 30.5.2007 at about 19.00 hours, when one Santhanam was proceeding at Mudichur Road and Krishna Nagar junction to attend his work, the detenu and his associate Sridhar @ Karthik wrongfully restrained Santhanam at the point of knife and asked him what was in his pocket. The detenu voluntarily inserted his hand into the shirt pocket of Santhanam and took away Rs.200/- and also snatched the wrist watch of Santhanam. Noticing that the detenu and his associate were escaping, Santhanam raised hue and cry. The public nearby tried to apprehend them on the spot, but the detenu and his associate picked up brick stones and threw the same against them. The stones fell down on the road, broken into pieces and the pieces scattered all over the road. The public ran to safer places out of fear of danger to their lives and properties, and thus the detenu and his associate created terror and panic at the spot. In the melee, the detenu and his associate tried to escape from the spot. However, with the help of public, the detenu and his associate were apprehended at the spot by the complainant.

3. The second respondent, taking note of the above case as a ground case and finding that there are three adverse cases pending against the detenu in Crime No.2033, 2056 and 2059 of 2007 on the file of Tambaram Police Station for the offences punishable under Sections 379 and 392 IPC and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 25.6.2007 on the only ground that the pre-detention representation dated 31.5.2007 sent by the mother of the detenu, has not been considered by the detaining authority before passing the detention order, which vitiates the order of detention.

5. It is well settled that any pre-detention representation made by the detenu or on his behalf should be considered by the detaining authority and if for some reason it is not possible to consider such representation before the order of detention is passed, such representation should be thereafter considered as expeditiously as possible.

6. Concededly, the mother of the detenu has made a representation on 31.5.2007 requesting not to detain her son under the Tamil Nadu Act 14 of 1982 and the detaining authority, while passing the detention order dated 25.6.2007, has not taken into consideration the said representation dated 31.5.2007, which shows the non-application of mind and hence, in our considered opinion, vitiates the impugned order of detention.

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7. In the result, the impugned order of detention dated 25.6.2007 is quashed and the Habeas corpus Petition is allowed. The detenu Selvam is directed to be released forthwith, unless he is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To

1. The Secretary to Govt.
   Prohibition and Excise Department
   Fort St.George
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600008.

3. The Superintendent of Central Prison
   Central Prison, Puzhal, Chennai.

4. The Public Prosecutor
   High Court, Chennai 104.

5. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai -9.

H.C.P.No.1241 of 2007

JP(CO)
RVL 03.12.2007

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